IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:10.10.2006

CORAM:

THE HON'BLE MR. JUSTICE P.JYOTHIMANI

W.P.No.7521 of 2006

& W.P.M.P.No.8262 of 2006

V.Rani ... Petitioner

Vs.

1. The Director of Elementary Education,
College Road, Chennai 9.

2. The District Elementary Education Officer,
Tirunelveli.

3. The Assistant Elementary Education Officer,
Naguneri Range,
Tirunelveli District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorarified Mandamus, calling for the records in Na.Ka.No.1716/A3/05, dated 18.07.2005 on the file of the 3rd respondent and quash the same as illegal and direct the respondents to fix the selection and special grade scale as per G.O.Ms.No.1366 Education Department dated 05.09.1986 and G.O.Ms.No.1105 Education Department dated 22.08.1989 in favour of the petitioner and consequently reimburse the amount already recovered from the salary of the petitioner.

Petitioner : Mr.A.Packiaraj
Respondents : Mr.P.Gopiraja, G.A.

O R D E R

This writ petition is filed challenging the order of the third respondent dated 18.07.2005 and to direct the respondents to fix the selection grade, special grade to the petitioner as per G.O.Ms.No.1366, Education Department, dated 05.09.1986 and G.O.Ms.No.1105, Education Department, dated 22.08.1989 and to reimburse the amount already recovered from the salary of the petitioner.

2. The case of the petitioner is that after completing his S.S.L.C. in the year 1969 and the Higher Grade Technical Examination in Sewing, he has passed technical teacher training examination during August 1975. He was

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appointed as full time Craft teacher on 13.06.1976 in Nanguneri Panchayat Union Middle School and his appointment was approved by the second respondent. Upto 1974, the basic qualification for appointment of the Craft teacher was fixed by the first respondent as VIII standard and the same was subsequently modified as X standard qualification and that was in force up to 30.09.1984. It was subsequently, in G.O.Ms.No.1366, Education Department, dated 05.09.1986, the scale was fixed for those who have passed S.S.L.C. and working as Craft teachers stating that they are entitled for Secondary Grade Teachers scale from 01.10.1984. However, as per the Government letter dated 18.11.1986 the monetary benefits was extended only up to 01.04.1986 and other service benefits from the date of appointment. The petitioner got secondary grade scale from 18.11.1986.

3. On the date of his appointment the petitioner was fully qualified and he should have been conferred in the secondary grade status. However, the second respondent has conferred the petitioner as secondary grade teacher as on 01.10.1984 and for the selection grade, 10 years qualifying service from the date of appointment alone is the criteria. Taking that into consideration, the petitioner was given selection grade from 30.06.1986, since his original date of appointment was 30.06.1976. He was also given special grade after completion of 10 years as selection grade namely on 30.06.1996. However, the third respondent has passed an order on 18.07.2005 directing the recovery of Rs.1,24,217/- on the basis of audit objection stating that the amount paid to the petitioner by way of selection and special grade from 01.04.1986 to 30.04.2003 is in excess.

4. The reasoning given in the audit report and recovery made was already decided by the Tamil Nadu Administrative Tribunal in O.A.No.3713 of 1994 and ultimately the Division Bench of this Court in W.P.No.12066 of 1999 upholding the order of the Tamil Nadu Administrative Tribunal by order dated 27.07.2001 and therefore, the fixation of selection grade and special Grade to the petitioner are in accordance with law. After lapse of seven years the respondents are raising the same issue once again and the third respondent passed order to recover the amount.

5. According to the petitioner, the second respondent has misread the proceeding of the first respondent in respect of the letter dated 22.11.2000 which is applicable only to those who are appointed as a Craft teachers with VIII standard, whereas the petitioner was fully qualified as S.S.L.C. passed on 30.06.1976 when he was appointed.

6. The petitioner also would submit that in any event, even if, there was any audit objection the respondent should have given opportunity to the petitioner to explain before the recovery order was passed on 18.07.2005, which was serviced on 31.07.2005. The petitioner also preferred a representation to the first respondent on 15.07.2005, giving a copy to the second respondent also. During the pendancy of the representation, the third respondent has reduced the salary of the petitioner and also ordered the recovery of amount of Rs.13,168/- which is assailed as illegal on various grounds as stated above.

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7. The second respondent has filed a counter affidavit. According to the second respondent, as per letter of the Government dated 04.10.1990 issuance of selection grade or special grade is only personal oriented and not the post oriented and therefore, the service rendered in the post carrying lower scale of pay namely as Craft teacher in Panchayat Union Middle School cannot be taken into account for the purpose of selection grade and special grade in the post having higher scale of pay.

8. According to the second respondent, the petitioner was granted selection grade from 30.06.1986 taking into account as service rendered in the lower scale of pay prior to 01.10.1984 and also special grade from 30.06.1996 on completion of 10 years and 20 years respectively and that was objected to by the audit party of the Elementary Education, Madurai, holding that the petitioner was entitled to selection grade only from 01.10.1996 that is 10 years after the elevated scale of pay of secondary grade teacher and special grade only from 01.10.2004 namely 20 years after the completion of elevated scale of pay as the secondary grade teacher. Therefore, according to the second respondent, granting of selection grade to the petitioner from 30.06.1986 by taking the service rendered by the petitioner in the lower scale of pay and also subsequent conferment of special grade from 30.06.1996 on completion of 20 years is irregular and therefore, it was only a rectification on mistake. It is also admitted by the second respondent that the petitioner is an S.S.L.C. eligible hand with higher grade in technical examination in Needle Work and Dress Making and Embroidery and Technical Teacher's Certificate and that she was appointed on 30.06.1976.

9. According to the second respondent, the petitioner was employed in Middle School and the scale of pay was Rs.150-225 from 30.06.1976 to 31.01.1978, Rs.280-450 from 01.04.1978 to 30.09.1984 and Rs.505-845 from 01.10.1984. The Government by G.O.Ms.No.1366 Education Department, dated 05.09.1986 has revised the scale of pay of Craft teachers with S.S.L.C. qualification and working in the Middle school as Rs.610-1075 as applicable to secondary grade teacher on par with their counterparts in the middle school from 01.10.1984. Therefore, according to the second respondent, it is from 01.10.1984 the salary of the Craft teacher in the Middle school was enhanced to the level of secondary grade teacher. It is also stated that as per G.O.Ms.No.1366 Education Department, dated 05.09.1986 the benefits of higher grade scale of pay to the Craft teachers in the Middle school with S.S.L.C. qualification was increased notionally from 01.10.1984 and monetary benefits was given from 01.04.1986 and therefore, the petitioner was placed in the elevated scale of pay from 01.10.1984 and from that date onwards after 10 years namely 1994 he acquired selection grade and after 10 years thereafter in 2004 he acquired special grade. However, by taking into consideration the original date of appointment namely 1976 when he was earning more than grade of pay his experience was counted for the purpose of granting selection grade in 1986 and special grade in 1996 and therefore, the excess payment paid by mistake was ought to be recovered and there is no illegality or irregularity in the same.

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10. Mr.Packiyaraj, learned counsel appearing for the petitioner would submit that as far as the conferment of benefit of G.O.Ms.No.1366 dated 05.09.1986 was concerned, by granting elevated pay scale, that was made applicable only in respect of the persons having lesser qualification than S.S.L.C. and were appointed as Craft teachers. Whereas, as far as the petitioner is concerned, even from his original date of appointment namely in 30.06.1976 as a Craft teacher he has passed S.S.L.C. which is higher qualification. Therefore, what was intended to be given in G.O.Ms.No.1366 was in respect of Craft teachers having lesser qualification than S.S.L.C. and that is not applicable to the petitioner and therefore, by awarding higher pay of scale to such persons based on the said G.O. does not affect the petitioner's right of selection grade which has been rightly conferred 10 years after the original appointment namely 1986 and thereafter special grade in 1996. The learned counsel also took me to the decision of the Tamil Nadu Administrative Tribunal in O.A.No.3713 of 1994 dated 20.07.1994 wherein by dealing with the G.O.Ms.No.1105 dated 22.08.1989 which is in continuation of earlier G.O.Ms.No.1366 dated 05.09.1986 wherein the Tribunal has held that the selection and the special grade which were not available earlier have been sanctioned from the date to the persons who have already been working in the ordinary grade and also the Tribunal has directed for a clarification from the Government. The learned counsel has also taken me to the decision of the Division Bench of this Court dated 27.07.2001 in W.P.No.12066 of 1999. The Division Bench while interpreting the said G.O. and also the order of the Tribunal has categorically come to a conclusion that the candidates in the said cases were undoubtedly entitled for selection grade on account of their services from the original date of appointment wherein it was 1970 as Middle School Craft teachers and particularly, they have acquired the proper qualification namely S.S.L.C. pass.

11. On the other hand, the learned Government Advocate would relying upon the contents of the counter affidavit that when once the G.O. has conferred the higher start of scale in 1984 it is in all fairness benefits should follow the said date onwards and therefore, the petitioner ought to have been given selection grade only from 1994 and thereafter the special grade from 2004. However, by mistake taking into consideration the original date of appointment of the petitioner namely 1976, he was conferred selection grade in 1986 and special grade in 1996 and the said mistake was sought to be rectified.

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12. I have heard the learned counsel for the petitioner as also the learned Government Advocate and perused the entire records.

13. At the outset, it should be understood for the purpose of appreciation of the facts of the case that as far as the petitioner was concerned admittedly he was S.S.L.C. passed candidates when he was appointed as a Craft teacher in the Middle school, that was on 30.06.1976.

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The purport of G.O.Ms.No.1366 dated 05.09.1986 as one can read is that it applies to cases wherein the persons who were appointed as Craft Teachers in the Middle School but who have not passed S.S.L.C. but have passed either VIII standard or X Standard only. In respect of those cases when subsequently they acquired the said qualification the said G.O. states that the benefit of higher start of pay shall be given to them from 01.10.1984 as it has been subsequently clarified by G.O.Ms.No.1105, Education Department, dated 22.08.1989. Therefore, on the face of it, one can easily understand the fact that the purport of said G.O.Ms.No.1366 dated 05.09.1986 as well as the subsequent in G.O.Ms.No.1105 dated 22.08.1989 are relating to the Craft teachers appointment in the Middle School with lesser qualification than S.S.L.C. pass and on the fact of it that will not be applicable to the facts of the case wherein the petitioner has admittedly passed in S.S.L.C. at the time when he was appointed as a Craft Teacher on 30.06.1976.

14. It is in this regard it is relevant to consider the order of the Tribunal. The Tribunal, as correctly pointed out by the learned counsel for the petitioner, in O.A.No.3713 of 1994 has taken a correct stand in respect of G.O.Ms.No.1105 dated 22.08.1989 stating that the sanction of the benefit of selection grade and special grade was to facilitate the person who were not having the facility at the time of their original appointment and in continuation of the said order, the Division Bench of this Court order dated 27.07.2001 in the case of District Educational Officer, Tiruvannamalai and others Vs. K.T.Marga Sahayagam held in W.P.No.12066 of 1999 has considered the purport of both the G.Os. and ultimately this Court has held considering a clarification letter of the Government dated 04.10.1990 as follows:

> "The learned counsel also relied on the Government letter dated 04.10.1990 to suggest that the services rendered in the posts carrying equal and higher scales of pay alone could be taken into account for his grant of selection grade or special grade in case of the respondent, since he was working as middle school craft teacher that service could not be taken into account for the purpose of awarding completed the adequate number of years of service would selection grade. The Tribunal has refuted this argument on the basis of the contents of paragraph 2 of G.O.Ms.No.1366 dated 05.09.1986 as also the other G.O.Ms.No.1105 dated 22.08.1989. We are in complete agreement with the Tribunal on the interpretation of the relevant Government Orders in question. The Tribunal has also taken the example of the Head Master of the primary schools and has drawn parallel. In our opinion, the language of the concerned Government Order is clear enough to suggest that the concerned respondent was undoubtedly entitled to the selection grade or account of his services right from 1970 as middle school craft teacher and thereafter, his services as high school craft teacher for which, he had also acquired a proper qualification, i.e. S.S.L.C. in the year 1986.

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In our opinion, there is no necessity to interfere with the order of the Tribunal in which the findings are recorded in a proper manner."

15. Therefore, a reading of the said order of the Division Bench of this Court has clearly put to an end to any controversy in respect of interpretation of the said G.O. as well as the subsequent clarification letter of the Government dated 04.10.1990 categorically holding that eligibility of selection grade and special grade in respect of the persons like petitioner who have got the necessary S.S.L.C. qualification at the time of appointment should be from the date of their appointment and not from the date of the enhanced payment of salary namely on 01.10.1984. In such circumstances, the legal position is very clear, I do not understand as to how the respondents have taken a different stand and proceeded with a wrong notion as if the amounts have been wrongly paid and the amount has been recovered accordingly.

16. In any event, there is one other circumstance in the case namely that reliance is placed on a circular dated 04.10.1990 which is not only against the G.O.Ms.No.1366, Education Department, dated 05.09.1986 as well as G.O.Ms.No.1105, Education Department, dated 22.08.1989 stating as if the service rendered in a post carrying lower scale of pay as a Craft teacher in Panchayat Union Middle School cannot be taken any account for the purpose of selection grade and special grade in a post in the Higher School which carries higher scale of pay. Whether this clarification letter which is patently against the G.O. can be made applicable to the petitioner who was appointed as a Craft teacher as stated above on 30.06.1976 and has been admittedly conferred selection grade in 1986 and in such circumstances whether the benefits conferred on him can be unsettled by a letter of the Government.

17. I am of the considered view that this letter cannot be put at least against the petitioner's case who has been conferred the benefit of selection grade even in 1986 admittedly. One other situation in this case is that when such benefits have been conferred based on the original date of appointment and that has been taken away in most arbitrary and illegal manner without even giving notice to the petitioner and most alarmingly in this case and amounts stated to have been wrongly paid have been recovered in an arbitrary manner from the salary of the petitioner which is unwarranted and un-called for.

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18. In view of the same, I have no hesitation to come to the conclusion that the impugned order of the third respondent dated 18.07.2005 is arbitrary and illegal and the same is set aside with a direction to the respondents to reimburse the amount already recovered to the petitioner within a period of four weeks from the date of receipt of the copy of this order.

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In the result the writ petition stands allowed with the cost of Rs.5,000/- to be paid by the respondents jointly to the petitioner.

Sd/-
Deputy Registrar (Judicial) I/C

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Sub Asst.Registrar

To

1. The Director of Elementary Education,
   College Road, Chennai 9.

2. The District Elementary Education Officer,
   Tirunelveli.

3. The Assistant Elementary Education Officer,
   Naguneri Range, Tirunelveli District.

+ one cc to Mr.S.Packiaraj, Advocate Sr.No.47290.

NA (CO)
RSM/18.10.2006

W.P.No.7521 of 2006
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